

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CLOANTO CORPORATION, a Nevada
Corporation

Plaintiff,

vs.

HYPERION ENTERTAINMENT C.V.B.A.,

Defendant.

No. 2:18-cv-00535-JLR

DECLARATION OF ROBERT J.
CARLSON IN SUPPORT OF
DEFENDANT'S MOTION TO
CONSOLIDATE

1. My name is Robert J. Carlson. I am one of the attorneys for the Defendant in this action, Hyperion Entertainment C.B.V.A. ("Hyperion"), and I am over the age of 18 years and otherwise competent to testify as to the matters set forth herein.

2. I also serve as one of the attorneys for Hyperion in another action currently pending in this District, Case No. 2:18-cv-00381-RSM, *Hyperion Entertainment C.V.B.A. v. Itec, LLC, Amiga, Inc., Amino Development Corp., and Cloanto Corporation*. I will refer to that action as the 381 action.

1 3. Hyperion's predecessor, Hyperion VOF, was named as a defendant in an action
2 filed in the Western District of Washington in 2007 by Amiga, Inc., styled as *Amiga, Inc. v.*
3 *Hyperion VOF*, No. 2:07-cv-00631-RSM. The presiding judge in that action was the Hon.
4 Ricardo S. Martinez. That action was resolved by a Stipulated Judgment based on a
5 Settlement Agreement; the Stipulated Judgment was entered December 14, 2009.

6 4. The Settlement Agreement recites that the parties to the Agreement are
7 Hyperion, on the one hand, and Itec, LLC, Amiga, Inc., and Amino Development Corp. (the
8 “Amiga Parties”) on the other hand; these are the same parties named in the 381 action.

9 5. Among other rights and obligations set forth in that Settlement Agreement,
10 Section 1 provides that the Amiga Parties grant Hyperion certain intellectual property license
11 rights in software, copyrighted materials, and trademarks. The Stipulated Judgment,
12 including the Settlement Agreement, is attached as Exhibit 1 to Hyperion’s Complaint in the
13 381 action.

14 6. The 381 action includes allegations that the Amiga Parties are in breach of
15 their obligations under the Settlement Agreement, asserts that Hyperion’s rights under the
16 Settlement Agreement are material to resolution of Cloanto’s claims against Hyperion in this
17 535 action (which at that time was pending in the Northern District of New York) and seeks
18 Declaratory Judgment as to respective rights asserted by Hyperion and Cloanto in software,
19 copyrighted materials, and trademarks.

20 7. Cloanto’s First Amended Complaint in this 535 action, Dkt. # 29, includes
21 allegations of copyright infringement, trademark infringement, unfair competition and other
22 equitable relief, some or all of which are related to software, copyrighted materials, and
23 trademarks that were the subject of the Settlement Agreement. Cloanto’s Amended
24 Complaint recites numerous allegations of fact representing Cloanto’s own view of
25 Hyperion’s rights under the Settlement Agreement, in paragraphs 24-37 of the Amended
26 Complaint, Dkt. # 29 at pp. 6-9.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July 2018, I caused to have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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By: s/ Robert J. Carlson

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